

JAN 19 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

VIERY CARRENO,

Defendant - Appellant.

No. 04-50042

D.C. No. CR-02-00354-AHS-01

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Alicemarie H. Stotler, District Judge, Presiding

Submitted January 9, 2006^{**}

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Viery Carreno appeals the 168-month sentence imposed following his
guilty-plea conviction for conspiracy to distribute and possession with intent to

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and 846. We have jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742.

Carreno's only contention on appeal is that the district court erred by applying the Sentencing Guidelines as mandatory. Because we cannot reliably determine from the record whether any error in the imposition of the sentence under the then-mandatory Sentencing Guidelines was harmless, we remand to the sentencing court to answer that question, and to proceed pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084 (9th Cir. 2005) (en banc). *See United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005).

REMANDED.